

REMARKS

Claims 1, 7-9, 11-15, 20, 26-28, and 30-47 are pending in this application. By this Response, claims 1, 7-9, 13-15, 20, 26-28, and 30-35 are amended, claims 2-6, 10, 16-19, 21-25, and 29 are cancelled and claims 36-47 are added. Claims 1, 20, and 35 are amended to recite determining if the average queue depth exceeds a first predetermined threshold of the one or more predetermined thresholds; initiating the start of a server instance for retrieving messages from the message queue by placing a trigger message on an initialisation queue in response to determining that the average queue depth exceeds the first predetermined threshold, wherein the trigger message indicates that the server instance is to be started; and resetting the average queue depth to less than the first predetermined threshold immediately upon the start of the server instance in response to determining that the first predetermined threshold has been exceeded. Support for these amendments may be found at least in canceled claims 2-6 and 21-25, and in the specification at least on page 13, lines 14-16. Claims 7-9, 13-15, 26-28, and 30-34 are amended for clarification purposes in view of the amendments to claims 1, 20, and 35. No new matter has been added by any of the above amendments to the claims. Reconsideration of the claims is respectfully requested in view of the following remarks.

I. Telephone Interview

Applicants thank Examiner Zhe for the courtesies extended to Applicants' representative during the October 30, 2007 telephone interview. During the telephone interview, proposed amendments that were sent to Examiner Zhe on October 24, 2007 and revised proposed amendments sent October 30, 2007 were discussed. Examiner Zhe, after receiving approval from her primary, Examiner An, indicated that if the revised proposed claims sent October 30, 2007 were filed as proposed with additionally amending claim 1 to include "having a processor" and amending claim 35 to include "stored on a computer recordable medium" the claims would be allowable. Examiner Zhe also indicated that the title of the application needed to be amended. Examiner Zhe agreed that the title as amended above is sufficient.

Further, Examiner Zhe agreed that the 35 U.S.C. § 101 rejection of claim 1 is overcome by amending claim 1 to recite “An apparatus, having a processor, for workload balancing in an asynchronous messaging system...” Examiner Zhe agreed that the 35 U.S.C. § 101 rejection of claim 35 is overcome by amending the claim to recite “A computer program for workload balancing in an asynchronous messaging system, the computer program stored on a computer recordable medium having computer readable program code, wherein the computer readable program code, when executed in a data processing system, causes the data processing system to...” Examiner Zhe agreed that the above amendments overcome the 35 U.S.C. § 112, second paragraph rejections. Examiner Zhe agreed that the cited prior art does not teach “initiating the start of a server instance for retrieving messages from the message queue by placing a trigger message on an initialisation queue in response to determining that the average queue depth exceeds the first predetermined threshold of the one or more predetermined thresholds, wherein the trigger message indicates that the server instance is to be started, and resetting the average queue depth to less than the first predetermined threshold immediately upon the start of the server instance in response to determining that the first predetermined threshold has been exceeded.” Examiner Zhe stated that amending the independent claims to include these features overcome the 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) rejections and place the application in condition for allowance. Examiner Zhe also stated that new claims 36-47 are also allowable since they include the allowable subject matter.

II. Conclusion

It is respectfully urged that the subject application is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

DATE: November 5, 2007

A handwritten signature in cursive script that reads "Francis Lammes". The signature is written in dark ink and is positioned above the printed name and address.

Francis Lammes

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